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In The Supreme Court of the United States

OCTOBER TERM, 1970

No. 453

HORTON R. PRUDDEN,

Petitioner,

versus

UNITED STATES OF AMERICA,

Respondent.

REPLY BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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The Government's memorandum in opposition attempts to distinguish this Court's decision in *Bumper* v. *North Carolina* (1968), 391 U.S. 543, 88 S.Ct. 1788; 20 L.Ed. 2d 797, by contending that the rule stated in *Bumper* relates to "consent searches of dwellings," whereas the instant case "involves the voluntary production of business and tax records," and "does not . . . involve the policy of protecting the privacy of the home." (Memorandum, p. 2). The attempted distinction is unwarranted, illogical and invalid -- the Fourth Amendment provides that not only "houses," but also "papers," shall be "secure . . . against unreasonable searches." Moreover, the Government's memorandum overlooks the fact that in the instant case part of the search was conducted in a garage apartment of petitioner's mother. Thus, Revenue

Agent Stanley, who joined the investigation when Special Agent Cohen took it over, testified:

> "A On March the 19th, '64 - which was Thursday, I was over there. And the place we're speaking of was - I believe it's 171 Clark Avenue, which is a room - a part of a garage apartment of his mother - Mr. Prudden's mother.
>
> "Now, on March the 19th, '64 - Thursday - I was there. On March the 25th, '64 - which was Wednesday - I was there; I have a record of that.
>
> "And March the 27th, '64 - which was Friday.
>
> "Q Back in the garage loft?
>
> "A Yes, sir.
>
> "Now, any of those dates, I might have been in the office and the garage; but I have a record of those dates being at the garage."
>
> (Appendix to Appellant's Brief in the United States Court of Appeals for the Fifth Circuit, pp. 135, 136.)

Bumper involved a search of petitioner's grandmother's house which produced a gun that had been used in a slaying. This Court held that the Government had the burden of proving that consent to the search was voluntarily given and was not obtained by fraud or deceit. (391 U.S. at 548-49; 88 S.Ct. at 1792.) The instant case involves a search of petitioner's mother's garage apartment which produced bank statements, deposit slips, checks and other records. The Court of Appeals for the Fifth Circuit held that the petitioner had the burden of proving that consent to the search was ob-

tained by fraud, deceit or trickery (App. 27, 30). The two cases cannot be distinguished and the conflict in decisions is real and irreconcilable.

The petition for writ of certiorari should be granted.

Respectfully submitted,

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